RESERVED

HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 2408 (M/S) of 2001.

Gurnam Singh S/o Late Amar Singh
Siting Tenant Harmony Cottage laxman
Puri Landaur Cantt Mussorie. …..Petitioner

Versus

1. Rent Control and Eviction Officer,
   Dehradun.
2. Chandan Singh Rawat S/o Late Shri G.S. Rawat,
   R/o I.T. Mo. Landaur Cantt Mussorie, Dehradun.

……..Respondents.

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has challenged the order or direction in the nature of certiorari quashing the order dated 23.11.2000 passed by the respondent no. 1 in Case No. 19/2000 U/s 12 of Act XIII of 1972, the order dated 27.06.2001 passed by the respondent no. 1 releasing the premises known as Harmony Cottage upper Landhour Mussoorie in favour of the owner and landlord as well as the order dated 6.7.2001 passed by the District Judge in RCR No. 146/2001 dismissing the revision filed by the petitioner.

Brief facts leading to the present writ petition are that the original owner and landlord of the property according to the petitioner was Smt. Kamla Prashar w/o Shri Y.N. Parashar E 367 Greter Kailash I New Delhi who executed as sale deed in favour of the respondent no. 2 namely Chandan Singh Rawat on 11.10.2000. The property in dispute consists of Room, Kitchen Latrine and covered corridors which was allotted to him by the Rent Control and Eviction Officer on 20.2.85 and by virtue of allotment order he is residing in the premises in dispute. It was alleged by the petitioner that he is paying rent to the landlord regularly and is in possession of the property in dispute since the inception of tenancy in his favour.

Smt. Guddi Devi who is sister in law of Shri Dharmendra Singh moved an application for declaring the vacancy of the property in dispute on the ground that the petitioner ahs left the disputed premises and the same has been handed over to Shri Dharmendra Singh. He has also filed an application for allotment in collusion with Shri Dharmendra Singh. In pursuance of the application for allotment the proceedings were numbered as Case no. 19/2000. The vacancy was declared on 23.11.2000.

Respondent no. 2 also moved a release application on 25.11.2000. The petitioner has preferred objections to the release application on 27.6.2001, stating therein that there is vacancy and, therefore, the release application is not maintainable. The release application however, as allowed. The petitioner has preferred a revision against the order of vacancy as well as release, which was numbered as R.C.R. No. 146/2001. The said revision was dismissed on 6.7.2001. The present writ petition has been preferred against the order passed by the District Judge Dehradun.

Heard Sri Arvind Vashishtha learned counsel for the petitioner and Sri B.D. Upadhyaya counsel for the respondent no. 2 as well as Standing Counsel for the respondent no. 1 at great length. Both the parties agreed that the writ petition may be disposed of at the stage as the parties have already exchanged their pleadings.

On submissions of the learned counsel for the parties following points arose for determination in this writ petition.

1. The order passed by the R.C. & E.O. dated 23.11.2002 declaring the disputed property as vacant is cryptic order and does not contain reasons and no opportunity was given to the petitioner to prove that the vacancy does not exist at all.
2. The allotment application was filed in collusion with the caretaker.

3. The order of vacancy having been challenged before the District Judge which was incumbent upon him to decide the question of vacancy as well, in view of referring order in Achal Mishra's Case.
4. The ailing mother was out of station, therefore, the petitioner was away in connection with her treatment and as such in such circumstances there cannot be any vacancy.
5. Eviction proceedings can be initiated only in a suit not by way of the proceedings under Section 12 of the Act.
6. Release cannot be allowed as there is no vacancy in the eye of law.

I have perused the orders passed by R.C. & E.O. and also the pleadings of both the parties.

Findings:

Point No. 1 and 2

Briefly stated the order dated 23.11.2000 has been passed on the ground that the petitioner has left the premises. The petitioner has filed the objections before the R.C. & E.O. stating therein that he is residing in the tenanted premises since 20.2.85. The petitioner was allotted the accommodation on 20.2.85, against which revision was filed and the same was dismissed by the District Judge on 30.6.86. Since the time of allotment he is residing in the premises permanently. It was further stated in paragraph 5 of the objection that his old ailing mother ahs to go to Bombay for treatment and in his absence one Shri Dhramendra Singh was looking after of the premises. On coming to know the immediately returned back to Mussoorie. It was also stated that he has not received any notice either for inspection of the premises as required by rule 8(2) of the Act or for allotment of the premises and such the entire proceedings are wholly ex parte Smt. Gurnam Kaur has also filed her affidavit.

The contention of respondent no. 2 is that vide order order dated 15.1.2000 the power of attorney was executed in favour of Shri Dharmendra Singh to look after the premises and the application for allotment was filed by Smt. Guddi Devi, Bhabhi of sri Dharmendra Singh. It was also alleged by the land lord that since the petitioner has allowed it to be occupied by a person who is not family member and as such a vacancy in house has been rightly declared. The power of attorney executed in favour of Sri Dharmendra Singh as well as the affidavit of Shri Dharmendra Singh has been relied by the respondent.

A perusal of the order dated 23.11.2000 passed by R.C. & E.O. shows that the R.C. & E.O. has not applied his independent mind and the order in question has been passed only after hearing the prospective allotted as will appear in the following line of the order.

"Is Nayayalay dwara sabhi pakshon ko niyamanusar notice jari kiya gaye. Bhawan swami kee aur se koi upasthit nahi hua. Abantan prarthigan ke vidwan adhivaktaon kee rekti par bahas suni gai."

The grievance of the petitioner is that inspite of the fact that he has filed the objections, but the same was not considered in accordance with rule 8 (2) and rule 8 (3) of the rules framed under the act has also challenged the two orders by way of revision before the District Judge. The learned District Judge has rejected the revision by saying the petitioner has no right to prefer the revision against the order of release. Without considering the vacancy the revisional Court has passed the order as under.

"The revision has been preferred under Section 18 of the U.P. Act No. XIII of 1972 against the order dated 23.11.2000 passed by the Rent Control and Eviction Officer, Mussoorie in Case No. 19 of 2000 by which the learned Prescribed Authority declared the premises in the tenancy/allotment of the revisionist as vacant and order dated 31.5.2001 and 27.6.2001 by which the learned lower authority rejected the application for seting aside the exparte order

and released the same to the respondent No. 2, ignoring the objections of the revisionist."

Therefore, from the record of the case it appears that neither the petitioner was heard before the R.C. & E.O. nor before the revisional Court.

The objector was entitled for an opportunity of hearing under Rule 8 (2) and (3) as well as the provisio to section 16(1). The aforesaid rule provide successive opportunities to the petitioner on the principles of natural justice. Rule 8 (2) and (3) as well as relevant considerations regarding aforesaid rule in the case (Supra) is quoted below:

(1) *"The District Magistrate shall, before making any order of allotment or release in respect of any building which is alleged to be vacant under section 12 or to be otherwise vacant or to be likely to fall vacant, get the same inspected.*

(2) *The inspection of the building, so far as possible, shall be made in the presence of the landlord and the tenant or any other occupant. The facts mentioned in the report should wherever practicable, be elicited from at least two respectable persons in locality and the conclusion of the inspection report shall be pasted on the notice board of the office of the District Magistrate for the information of the general public, and an order of allotment may be passed not before the expiration of three days from the date of such pasting, and if in the meantime any objection is received, not before the disposal of such objection.*

Therefore, it was incumbent upon R.C. & E.O. should have given an opportunity to the petitioner to dispose of the objections as required by Sub Rule 3 of rule 8 of U.P. Act 1972 which reads as under:

(3) Any objection under sub-rule (2) shall be decided after consideration of any evidence that the objector or any other person concerned may adduce.

Apart from that proviso to section 16 also provides as under.

[Provided that in the case of a vacancy referred to in sub-section (4) of section 12, the district Magistrate shall give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause (a).]

In my opinion, therefore, the objections preferred by the petitioner should have been considered in accordance with law as well as proviso to section 16 of U.P. Act 1972.

So far as the question regard to recording of reasons by the Rent Control Authority is concerned, it has been held that recording of reasons is a link between the application of mind and lis of the case.

Relying upon the judgment of the Apex court in AIR 1972 SC page 6 AIR 1973, AIR 1976 SC 1785, SC page 2756, 2761 is has been held in Adarsh Kumar Sain 1988 (2) ARC 527 that sub clause (7) of section 34 of the Act provides a mandatory provision for the authorities to record reasons while passing the orders:-

7. *Sub-clause (7) of section 34 of the Act costs an obligation on the authorities constituted under the Act, including the prescribed Authority to record reason for every order made under the Act. That provision reads as under:*

   "Section 34(7)- The District Magistrate the Prescribed Authority or the Appellate or Revisional Authorities shall record reasons for every order made under this Act."

In view of the above provision an order under Section 12 (3) must contain reasons in support of the decision taken by the Prescribed Authority, Reasons necessarily means intangible reason which even if not very elaborate exhaustive or lucid, must show application of mind and consideration of the case set up by the contesting parties. The proceedings relating to declaration of vacancy under section 12 of the Act is of quasi-judicial in nature. The question about determination of vacancy of a quasi-judicial authority must conform to the provisions of the Act and rules relating thereto. In ***Siemens Engineering & Mfg. Co. V. Union of India*** *AIR 1976 SC 1785. The Supreme Court observed as under:*

> *"It is now settled law that when as authority makes an order in exercise of a quasi judicial functions, it must record its reasons in support of the order it makes. Every quasi judicial order must be supported be reasons… The rule requiring reasons to be given in support of an order is, like the principle of audi alteram, a basic principle of natural justice which must inform ever quasi judicial process and this rule must be be observed in its proper spirit and mere pretence of compliance with it would not statisfy the requirement if law."*

8. As pointed out by the Supreme Court in Union of India V. M.L. Capoor, AIR 1974 SC 87 at page 97 the reasons recorded must not be an apology for reasons, which are required to be recorded by the quasi judicial authority. It was further pointed out that the reasons are the links between the material on which certain conclusions are based on the actual conclusions. They disclosed how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi judicial. They should reveal a rational nexus between the facts considered and the conclusion reached only in this way can an opinion or decisions recorded be shown to be manifestly just and reasonable.

9. *In* ***Woolcombas of India Ltd. V. Woolcom Workers Union.*** *AIR 1973 SC 2756, 2761, Dweivedi J. Speaking for the Supreme Court, has observed.*

"……..Unreasoned conclusions may be just but they may not appeal to be just to those who read them. Reasoned conclusions, on the other hand, Will have also the appearance of justice. Third, It should be remembered that an appeal generally lies from the decision of the judicial and quasi-judicial to this Court by special leave grated under Article 136. A judgment which dies no disclose the reasons will be of little assistance and find for itself whether the decision in appeal is right or wrong. In many cases this investment of time and of industry will be saved if reasons are given in support of the conclusions."

In my opinion the order does not disclose that there was any application of mind by the R.C. & E.O. when it declared the vacancy in respect of the disputed accommodation and consequently if failed to discharge its obligation of recording reasons in support of its order as it was required to do so under sub-section (7) of Section 37 of the Act.

Point No. 3

Coming now to the case of reference to the Larger Bench by the Apex Court in the case of Achal Mishra, he question of vacancy being jurisdictional fact should have been heard by the revisional Court along with the final order. In Achal Mishra's case it has been observed by the Hon'ble Supreme court in 2000 Volume (2) A.R.C. 446 as under:

> "*After we heard the matter, we find the appellant having filed the revision petitions in pursuance of mandate of this Court in T****rilok Singh's*** *case, she cannot be left without remedy in view of* ***Ganpat Roy's*** *case (Supra). Moreover, in* ***Ganpat Roy's*** *case, this Court was considering as to whether a petition*

under Article 226 of the Constitution against notification of vacancy is maintainable or not. In the connection, this Court found that the notification of vacancy causes prejudice to a landlord or a tenant and since there is no equally efficacious remedy available under the Act. Therefore, a petition under Article 226 is maintainable. This Court did not hold that landlord or tenant had no remedy at all under Act.

On examination of provisions of the Act and Rules, we find that rule 8 (2) of the rules provides that the inspection report of the Inspector is required to be pasted on the notice board in the office of the District Magistrate for information of the general public and after the notice is pasted, a tenant or a landlord has a right to file an objection, and if any objection is filed within three days from the date of pasting of the report, the said objection is required to be decided by the Rent Controller. It is after the said objection is decided, the vacancy is notified. Under proviso of sub-section (1) of Section 16 of the Act, the District Magistrate is further required to give an opportunity to the landlord or the tenant, as the case may, to show that there is no vacancy as contemplated under sub-section (4) of Section 12 of the Act. It is only after hearing of such objections, if filed the District Magistrate can allot the premises. Under sub-section (5) of Section 16 of the Act, the landlord or the tenant has a further right to file a review against the order of allotment if such order is not passed in accordance with clause (a) or clause (b), as the case may be, of sub-section (1) of Section 16. Any person, who is aggrieved against any final order passed under Section 16 of the Act, is entitled to file revision under Section 18 of the Act before the District Judge on grounds enumerated therein.

In view of the aforesaid provisions it cannot be said that the question of vacancy if not challenged by a separate writ petition on its notification, cannot be questioned in the revision

file under Section 18 of the Act. The question of vacancy pertains to jurisdictional facts and can very well be challenged in the revision filed against allotment order passed by the District Magistrate. In case it is found that there is not vacancy the order of allotment has to be set aside. We, therefore, feel that the decision in Ganpat Roy's case holding that the validity of vacancy cannot be agitated in a revision under Section 18 of the Act appears to be incorrect. Since the decision in ***Ganpat Roy's*** *case is by a three Hon'ble Judges, we feel it appropriate that this appeal be decided by Larger Bench. Let the record of the case placed before the Hon'ble the CJI for appropriate orders."*

In Ravindra Pratap Singh 1997 Volume (1) ARC 264 the vacancy has been held to be jurisdictional fact and is amendable to revisional jurisdiction. It has been held as under:-

"The factum of vacancy within the meaning of sub-section (4) of Section 12 of the Act being a jurisdictional question, can be gone over and traversed upon by the Revisional court under Section 18 in the revision preferred against the final order under Section 16 of the Act. Proviso to section 16 (1) of the Act confers a right on the landlord or the tenant, as the case may be, to get the notification of vacancy recalled by showing that Section 12(4) is not attached. It also enjoins a duty on the District Magistrate to drop the allotment proceedings in case he is satisfied that section 12(4) is not attracted.'

Similar view was taken in the Judgment of Allahabad High Court, in 1997 (3) AWC 1355 Law Publishers, Allahabad Vs. Additional District Judge, Allahabad and others. The observations are quoted below:

"The question of vacancy is jurisdictional one and can therefore, be examined even by the Revisional Court in exercise of its power under Section 18 read with proviso to section 16 (1) of the Act for in the absence of the vacancy, the Rent Control and Eviction Officer does not get jurisdiction either to allot a premises or to release it in favour of the landlord under Section 16 of the Act.

A perusal of the order declaring the vacancy dated 23.11.2000 shows that it has been passed without affording any opportunity to the petitioner to file objections as held in the case of Ravindra Pratap Singh 1997 (1) ARC 264 reads as under:

" I have meticulously scanned the decisions aforesaid as also the related provisions of the Act and Rules and I am of the view that an order of allotment brought about Sans notice to the landlord or tenant, as the case may be, operates in vacuum. Rules 8 (2) and (3) as also the proviso to Section 16 (1) in fact, encompass a fact of principle of natural justice and it is well settled that an order fraught with civil consequences, if passed in breach of the principles of natural justice would operate in void."

As will appear from the facts that the vacancy was declared on 23.11.2000 and release order was passed on 31.5.2001 and in the meantime on 1.3.2001 the objections were filed along with affidavit. The release order dated 31.5.2001 contains the objection filed by the petitioner. The same is incorporated as under:-

"Adhyashi Gurnam Singh kee aur se sapathpatra Denank 1.3.2001 dakhil kiya gaya tatha sapathpatra kee pushti me anya abhilekh paper no. ka-13/3 se 13/12 dakhil keye gaye tatha apatti patra no. ka-13/13 se 13/16 dakhil kiya gaya. Jis par bhawan swami ke adhivakta ne apni apatti ankit kee hai tatha appatti patra ko vichar yogya nahi hai, kaha gaya hai. Bhawan swami dwara Sri Harish Rawat ka sapathpatra dakhil kiya gaya. Jisme apatti patra ko swikar nahi kiya gaya hai tatha ullekh kiya gaya hai ki Guddi Devi abantan prarthi

Ne abantan prarthanapatra dinank 9.6.2003 me ullekh kiya hai ki uske pas koi prithak avas nahi hai aour vah apne devar ke sath teeka ram building landau me niwas kar rahi hai. Jisme ispast hai kee Dharmendra Singh abantan prarthi ka devar hai va prashngat bhawan ko kabjane ke uddeshya se shadyantra racha hai. Prashngat bhawan rikt kar Mussoorie se anyantr chale gaye hain. Unke bacche bhi Mussoorie se anyantra shiksha grahan kar rahe hain.

Adhyashi Gurnam Singh ke adhivakta ne do sapathpatra dinank 6.6.2001 ka prastut kiya. Jis par bhawan swami ke adhivakta dwara apatti ke gai."

Prima facie it is evident that there is nothing on the record to indicate that the petitioner has left the premises permanently. However it will be open the R.C. & E.O. to record a finding after taking evidence of both the parties.

So far as affording the opportunity to the petitioner is concerned, suffice it to say that Act and rules of act No. 13 of 1972 has taken precaution to safeguard the interest of sitting tenant by providing sufficient opportunities to establish that ingredients of Sec. 12(1) (a), (b) and (c) are not attracted at all.

Point No. 4

However even if it is assume that the reference is Achal Mishra's case is pending before the Apex Court and the same has not been finalized, the order of vacancy, therefore, has to be looked into independently.

Coming to the merits of the order dated 23.11.2000 is concerned no reason has been assigned by the R.C. & E.O. before declaring the vacancy, Section 12(1) (a), (b) and (c) provides as under:

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

The order dated 23.11.2000 is completely silent, with regard to substantial removal or taken up residential premises elsewhere or occupied by any member of the family permanently. None of the ingredient of section 12(1) (a), (b) and (c) are satisfied.

In the case of Dr. S.N. Ghosh Vs. R.C. & E.O., 1976 A.L.J. 256 the premises was in occupation of the tenant and the tenant was temporarily out of station.

It has been held that temporary occupation will not be sufficient to attract clauses (a) (b) and (c) of the Act. It has been held as under:

"A careful reading of the three Clauses (a), (b) and (c) of sec. 12(1) makes it amply clear that the legislature intended that if the tenant or landlord removes his effects substantially from the building in that case legal fiction would be attracted. The expression 'substantially removing his effect' is of great significance. It does no contemplate removal of some house-hold effects, on the contrary it envisages that for all practical purposes the landlord or tenant as the case may be should be found to have practically removed all his house-hold effects from the accommodation in question. Clause (b) is attracted when a tenant or landlord allows any person who is not a member of his family as defined in Sec. 2(g) of the Act to occupy the building. This provision is intended to prevent sub-letting and unauthorized occupation without allotment order. But the material question then arises as to whether it is open to a tenant to appoint a caretaker to look after his house-hold effects and the building during the period of his temporary

absence from the station. In enacting clause (b) the legislature intended that the legal fiction should be applicable only when the tenant or the landlord allows the premises to be occupied by some other person surreptitiously with a view to defeat the provisions of the Act. The occupation by such a person if intended to be of a permanent nature the deeming provision would be attracted and vacancy would be attracted and vacancy would occur in law. But the legislature never intended that if a tenant goes out on leave or for tour for six months or for a year and in that case if the building is occupied by a servant or any of his family friend with a view to keep watch on his goods which may be kept in the building vacancy shall be declared or deemed to have occurred. It does not require any argument that a servant is not family member as defined in the Act and if the respondent contention is accepted, even the occupation of the house by a servant in the absence of the tenant may attract the deeming provision to declare the building vacant. This was never intended by the legislature in enacting clause (b) of sub-Sec. (1) of sec. 12. A family friend may be kept to keep watch on the house-hold effects of the tenant or the landlord during his temporary absence. In my opinion it makes no difference in law, if the tenant permits his family friend to occupy a portion of the accommodation as caretaker during his absence or if a servant is allowed to reside therein for keeping watch. What is material is the dominant intention of the tenant, if on enquiry it is found that the tenant had gone out and that he had vacated the premises and allowed another person to occupy the building under the guise of a family friend although he had no intention or necessity to reside in the building, the deeming provision would apply. But if it is found that the tenant had gone out temporarily and the he was to return back and continue to reside in the building, there would be no question of any vacancy."

Point No. 5

So far as submission of the petitioner with regard to the case of Devendra Kumar Pandey 2001(2) ARC 516 that the question of vacancy can be raised in the suit alone. The case is distinguishable as the sitting tenant has every right to show that Section 12(1) (a) (b) (c) are not attracted to the facts of the case in view of the provisions and scheme of the Act contained under Rule 8 as well as proviso to Section 16 of the Act. The submission of the petitioner therefore, cannot be accepted in regard to filing the suit, and therefore it is decided against him in view of the judgment of the Apex Court.

In the case of Yogendra Tiwari Vs. District Judge, Gorakhpur A.R.C., 1984 (2) it has been held that the affording of number consists of two stages, Paragraph 5 to be quoted:

> *"it is needless to stress that the making of an order of allotment by the District Magistrate under Section 16(1) (a) of the Act consists of two stages. The first stage is actual vacancy of a building or a part thereof in consequence of an intimation given by the landlord or the tenant under Section 15, or a declaration of deemed vacancy of such building or part thereof under Section 12(4). It is clear from the terms of the proviso to Section 16(1) that in the case of a deemed vacancy under Section 12(4) of the Act, the District Magistrate is required to give an opportunity to the landlord or the tenant, as the case may be, of showing that no declaration of deemed vacancy under Section 12(4) could at all be made in his case before making an order of allotment under section 16(1) (a). The use of the word 'shall' in the proviso therefore cannot make and order of allotment under section 16(1) (a) on the strength of deemed vacancy under section 12 (4) until the landlord or the tenant, as the case may be, has an opportunity of being heard in the matter. The District Magistrate is required in terms of Rule 8(2) to give an opportunity to the landlord to file his objection*

Or make his submission, if any, to making of an order of allotment under Section 16 (1) (a). In the case of deemed vacancy referred to in Section 12(4), he is entitled to show that none of the clauses (a) to (c) of section 12(1) comes into play. The second stage is reached when there is a deemed vacancy under Section 12 (4) or actual vacancy in consequence of an intimation under Section 15."

Similar view was taken in the case of Ganpat Roy A.I.R. 1985 SC 1635 the Apex Court has held that the act provides successive opportunity to the tenant when vacancy is deemed. The Apex Court has also observed that the Act provides sufficient opportunity to the petitioner to establish that there exists no vacancy. The observation of the Apex Court is quoted below:-

"Section 11 of the Act prohibits a person from letting any building except in pursuance of an allotment order issued under S. 16. Sub-sections (2) and (4) of S. 12 provide as follows:

"(2) In the case of a non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building."

"(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of sub-section (1), or Sub-section (2), or sub-section (3), sub-section (3-a) or sub-section (3-B), shall, for the purposes of this Chapter, be deemed to be vacant."

Section 13 provides that where a landlord or tenant ceases to occupy a building or part thereof, no person is to occupy it in any capacity on this behalf or otherwise than under an order of allotment or release under S.16 Section 15 casts a duty on every landlord or tenant to give intimation of vacancy to the

District Magistrate may, by an order, require the landlord to let any building which is or has fallen vacant or is about to fall vacant, or a part of such building. To any person specified in the order (called the allotment order) or may release the whole or any part of such building in favour of the landlord. Under the Proviso to S. 16 (1), in the case of a vacancy referred to in S.12 (4) the District Magistrate is to give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause (a) S. 16 (1). That is, before making an allotment order.

Chapter III relates to the regulation of letting. Section 11 deals with the prohibition to occupy without allotment order. Section 12 is a deeming clause. Section 12 (4) provides that the District Magistrate shall give an opportunity to the landlord or tenant, as the case may be, of showing that the said Section 16(1), is not applicable. Section 13 provides that where a landlord or tenant ceases to occupy a building or part thereof, no person is to occupy it in any capacity on his behalf or otherwise than under an order of allotment or release under Section 16. Section 15 casts a duty on every landlord or tenant to give intimation of vacancy to the district Magistrate. The Apex Court in Ganpat Roy Vs. Add. District Magistrate page 1635 has observed as under:

Under the proviso to S. 16 (1), which was inserted by the 1976 Amendment Act, the District Magistrate is required in the case of a vacancy referred to in sub-sec. (4) which includes a deemed vacancy under S. 12 (2) to give an opportunity to the landlord or tenant, as the case may be, of showing that S. 12(4) is not attracted to his case before he makes an order of allotment under clause (a) of S. 16 (1). Thus this proviso, however, does not apply in the case of an order of release

Made……..…..the tenant has thus no adequate or effective remedy against an order notifying a vacancy.

In our opinion, the scheme of the Act would show that a tenant of premises in whose case it is found that there is deemed vacancy has no efficacious or adequate remedy under the Act to challenge that finding. A petition under Art. 226 or 227 of the Constitution filed by such a tenant in order to challenge that finding cannot, therefore, be said to be premature.

The aforesaid view of the Apex Court has been relied by the Division Bench of Allahabad High Court in Sudershan Singh Bedi 1993 (1) ARC 121. The observations in Sudershan Singh Bedi (Supra) is quoted below:

" The declaration of vacancy by Rent Control and Eviction Officer contemplates pleadings and evidence and the Rent Control and Eviction Officer is invested with the power of a Civil Court in regulating the procedure for taking evidence etc. He is also to determinate the dispute after taking into account the objections raised by the parties and has to pass reasoned order.

"In Ganpat Rai V. Additional District Magistrate, AIR 1985 SC 1635: 1985 (2) ARC 75 (SC): 1985 (2) ARC 75 (SC): 1985 SCFBRC 279 (SC), considering the scheme of the Act for declaration of vacancy the court held that before declaration of vacancy an onbjector has a right to be heard. The relevant paragraph of the case is quoted below:

"It equally does not appear to be correct to hold that an order notifying the vacancy did no injury and caused no prejudice to the interest of any party because an order notifying the vacancy could be objected to and if any

Objections were filed they would have to be decided after considering the evidence that the objector or any other person concerned might adduce and that after an order of allotment or release was passed following upon the notification of vacancy, the aggrieved person could file a review application or an appeal under Section 18. In so holding the Court appears to have overlooked the state for objecting to a vacancy being notified was not after it was notified but as provided by Rule 8 before it was notified and that under the said Rule 8 the notification of vacancy could only be after the objections were heard and disposed of. The Court itself pointed out in that case that the Act did not provided for a hearing at the stage when the District Magistrate passed an order of allotment of lease."

Apart from that Section 37 provides finality to the orders passed under this Act. Section 37 provides as under:

"No order made in exercise of any power conferred by or under this Act shall be called in question in any court.

Where an order purports to have been made and signed by exercise of any power conferred by or under this Act, a Court shall, unless the contrary is proved, presume that such order was so made by that authority."

The District Magistrate as defined under Section 3 (c) of the Act has been authorized to conduct the matters relating to Chapter III of the Act. Therefore, suit either at the instance of the landlord or the tenant is not maintainable in the cases covered under Chapter III of the Act. Chapter III read with rule 8 is a complete code, which gives successive opportunities to the landlord or the tenant. The law is well settled that if the act provides a particular mode of procedure only that procedure has to be allowed and nothing else as held by the Apex Court in the case of Chandr Kishore Jha vs. Mahavir Prasad and

Others (1999) 8 SCC 266 as well as State of Uttar Pradesh Vs. Singhara Singh and others.

The apex Court in the case of Chandra Kishore Jha Vs. Mahavir Prasad and others (1999) 8 SCC 266 observed as under :

It is well-settled salutary principle that if statute provides for a thing to be done in a particular manner then it has to be done in that manner and in no other manner (See with advantage: Naxir Ahmad Vs. King Emperor, AIR 1936 PC 253 (II); Rao Shiv Bahadur Singh Vs. State of V.P. (AIR 1954 PV 322; 1954 SCR 1098; State of U.P. Vs. Singhara Singh (AIR 1964 SC 358: (1964) 1SCWR 57).

Similar view has been taken in State of U.P. Vs. Singhara Singh and others where the judgment of English Case Law of *Taylor Vs Tayolr* has been relied the same as quoted below*:*

In the State of Uttar Pradesh Vs. Singhara Singh and others reported in AIR 1964 SC 358 (V 51 C 45), the apex Court has relied upon the English Case Law of ***Taylor Vs. Taylor*** *and has observed as under:*

The rule adopted in Tayolr Vs. Taylor (1878) 1 Ch D 426 is well recognized and is founded on sound principle, Its result is that is a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed."

The Hon'ble Supreme Court in the case of Dhanjaya Reddy Vs. State of Karnataka (2001) 4 S.C.C. 9 took the same view that where law requires a thing to be done in a certain manner it has to be done in that manner or not at all. The Court

Further observed that the power must be exercised in the manner provided by the statute.

Point No. 6

Regarding the submission of the petitioner challenging the release order it is made clear that since the question of vacancy is a sine qua non of allotment and release, therefore, no relief can be granted so far as the prayer of the petitioner for quashing of the release order is concerned. Moreover it has already been held by the Apex court in the case of Vijay Kumar Sonkar 1995 (2) A.R.C. that a tenant has no right to challenge the order of the release. The observation of Apex Court in Vijay Kumar Sonkar 1995 (2) A.R.C. is quoted below:

"It is on this understanding of the law that the High Court relying on its Full Bench decision in the case of Talib Husain V. Ist Addl. District Judge, 1986(1) ARC 1 (SC): 1986 SCFBRC 369 (Alld) (FB): 1986 Alld (FB): 1986 All LJ 845 (FB), rejected the prayer of the prospective tenant that he had a right to be heard in a release application of the landlord based as it was on the provisions of sub-section (2) of section 16 on ground of bona fide requirement."

So far as the release part is concerned it is well known that vacancy is sine qua non for releasing the accommodation the same shall be operative only after declaration of vacancy afresh by the R.C. & E.O. Thus the submission is decided in negative and against the petitioner.

In the result, therefore, the writ petition succeeds and is allowed. The order dated 23.11.2000 passed by R.C. & E.O. as well as the order dated 6.7.2001 passed by the District judge so far as the declaration of vacancy alone in revision is set aside. The matter is remanded back to the R.C. & E.O. to decide the question of vacancy afresh in the light of the observations made above. The mater shall be

decided within a period of four months from the date of filing of the certified copy of the order.

(Rajesh Tandon, J.)

01.09.2003
Pradeep